



THE CITY OF SAN DIEGO

REPORT TO THE HEARING OFFICER

HEARING DATE: October 20, 2004 REPORT NO. HO 04-04-159

ATTENTION: Hearing Officer

SUBJECT: OCEANIS APARTMENTS - COASTAL DEVELOPMENT PERMIT
AND VARIANCE. PTS PROJECT NUMBER: 21983

LOCATION: 5102-12 Voltaire Street and 5101-11 Lotus Street

APPLICANT: Larry Pappas, Pappas Design Group

OWNER: Paola Tresco

SUMMARY

Requested Action - Should the Hearing Officer approve Coastal Development Permit No. 55655 and Variance No. 78578 to allow an existing building addition constructed without permits remain at the project site?

Staff Recommendation -

1. Deny Coastal Development Permit No. 55655 and Variance No. 78578.

Community Planning Group Recommendation – At the Ocean Beach Planning Board's General Meeting on September 1, 2004 the OBPB recommended denial of the project by a vote of 9-0-0 based upon the project's FAR, the non-permitted building that took place, and parking concerns. As part of the motion, the OBPB requested that 2 units on each property (4 total) be set aside as affordable housing in lieu of any fines that may be incurred by the owner for the non-permitted building.

Environmental Review – The project is categorically exempt from California Environmental Quality Act (CEQA) review pursuant to State CEQA Guidelines Section 15332, "Infill Devevelopment".

BACKGROUND

The subject property is located at 5102-12 Voltaire Street and 5101-11 Lotus Street, in the RM-2-4 Zone within the Ocean Beach Precise Plan, Coastal Overlay (non-appealable), Coastal Height Limit, Parking Impact, Airport Environs and Airport Approach overlay zones, and is designated for multi-family development. The site is located on the southeastern corner of Voltaire Street and Abbot Street, and spans the block, also fronting onto Locust Street to the south. The project site is comprised of two (2) 5,625-square-foot lots and the premises totals 11,250-square-feet (Attachment 1). The subject property is presently improved with a 7,271 square foot, two-story, 22-unit apartment building and fifteen (15) covered parking spaces. Approximately 863-square-feet of the existing building was constructed without necessary planning and building permits and is currently the subject of Neighborhood Code Enforcement Case No. 65412 (Attachment No. 6), including 438sf of habitable living space, 213-sf single car garage, and 212-sf of common area. The project is surrounded by various, moderate scaled multi-family residential developments.

The property at 5102-5112 Voltaire Street was originally improved with eleven units in 1959, per Building Permit No. 014350, and is nonconforming with respect to current density, yard requirements, floor area ratio, and off-street parking standards. The property at 5101-5111 Lotus Street was originally improved with eleven units in 1964, per Building Permit No. A81542, and is nonconforming with respect to current density, yard requirements, floor area ratio, lot coverage, and off-street parking standards. The property was purchased by the current applicant, Paola P. Tresco, on January 16, 1992. In 1993, Paola Tresco applied for the following variances in response to citations issued by the Neighborhood Code Compliance Department:

- 1) Construction of a 170 square foot, one story, carport structure, erected on a paved area between the two apartment building on the properties. The structure would result in an increase in existing, nonconforming floor area ratio and lot coverage, extend into the required front and street side yards adjacent to Abbot Street, and be accessed through two garage doors; and
- 2) Construction of garage doors to enclose the fourteen existing, open carport areas on the first story of both buildings, located within the required front and street side yards adjacent to Abbot Street.

According to the NCCD citation, preliminary framing of the requested carport and support structures for the garage door installation had been partially completed, however no building or zoning permits had been approved for the improvements.

On August 27, 1993, the City of San Diego Zoning Administrator held a public hearing to consider the request for the variances. The Zoning Administrator partially approved the request for the variances (Attachment 7), approving the variance to enclose the existing carports based on findings that the majority of the multi-family units located within the immediate area had enclosed garages. The findings also indicated that the approval of the variance allowed the property owner equitable use of the two properties, there would be no increase in F.A.R. or lot coverage from the enclosure of the carports because of their specific design, and the variance was viewed as fulfilling the purpose and intent on the zoning regulations. With special

conditions imposed, the enclosure of the carport was not viewed as injurious to the neighborhood and nor adversely impacting on the General Plan for the City of San Diego are not anticipated.

The Zoning Administrator, however, denied the request for a variance to construct a carport/garage structure between the two existing buildings at the properties. It was determined that adequate alternatives existed to secure the area between the two buildings without creating the need to allow variances for excessive lot coverage, reduced building setbacks and a floor area ratio (FAR) on the premises increased to 1.24 where 0.70 was the maximum permitted (existing pre-conforming improvements observed a 1.22 FAR). It was also determined that the variance was not the minimum necessary to allow reasonable use of the properties. No appeals were filed by anyone within the required 10 day appeal period and the Zoning Administrator decision became final on September 7, 1993.

DISCUSSION

In February 1999, Neighborhood Code Compliance Department (NCCD) received complaints regarding construction without permits on these properties. On March 4, 1999, NCCD issued a Stop Work Notice to stop the construction or obtain the necessary permits (Attachment 7). The Stop Work Notice was ignored and a two story, 863-square-foot addition connecting the two buildings was completed. The non-permitted addition had been built up to, and across the rear property line of both parcels, up the side property line along Abbot Street on both parcels, and was observing a 0'-0" rear set back and a 0'-0" street side set back on both parcels. The addition also increased the floor area of each parcel by approximately 400-square-feet, resulting in the FAR of each parcel being increased by seven percent (7%). It was verified through several inspections from NCCD that the lower level addition was being used as a two car garage and the second level addition was being used as an extension to Unit #3 consisting of a dining room, bathroom, and storage room, the other half was a similar addition to unit #4. NCCD issued several Notice of Violations, all to which the property owner did not respond and eventually the case was referred to the City Attorney's office for prosecution.

Variance Requests:

The current application under consideration is in response to the NCCD citations and proposes to legalize the existing two-story addition by again seeking approval for variances to allow an increase in the non-conformity of the existing structure as follows:

- 1) ***FAR Increase:*** Variance to allow an increase in FAR from 1.21 to 1.29 where 0.70 is the maximum allowed. The project site is 11,250-square-feet in lot area. The permitted development (without subject 863-square-foot addition) is preconforming and has a gross floor area (GFA) of 13,636-square-feet, resulting in an FAR of 1.21. The proposed 863-square-foot addition would increase the GFA on the premises to 14,499-square-feet, resulting in an FAR of 1.29. Under the current RM-2-4 zone regulations, the site would be limited to a maximum FAR of 0.70, which translates to 7,875-square-feet of GFA.
- 2) ***Reduced Parking:*** Variance to allow 1 additional parking space to be provided where 9 would be required as a result of adding bedrooms to a previously conforming structure. The Land Development Code requires that when a preconforming use located within the beach

impact area of the Parking Impact Overlay Zone is proposed to be enlarged, additional parking shall be provided at two times the number required for the enlargement but not exceeding the amount required for the entire development.

3) *Reduced Street Sideyard Setback:* Variance to allow the structure to observe a zero (0' - 0'') street sideyard setback adjacent to Abbot Street where a minimum of 15'-0" is required. The RM-2-4 zone allows a minimum street side setback of 10 feet or 10 percent of the premises width, whichever is greater. The new two-story addition structurally connects what previously existed as two independent structures into one structure, resulting in the two 75'-0" lots now being considered as a single premises of 150'-0" in width.

In January 2000 the property was rezoned to RM-2-4 from R-1750; unlike the previous 1993 application under the R-1750 zone, the current RM-2-4 zone does not specify a limit on lot coverage and therefore a variance to allow an increase in lot coverage is not required. A coastal development permit is required because the addition of 2 new bedrooms is considered an intensification of use of the property.

Community Planning Group Recommendation:

The subject project was presented at the Ocean Beach Planning Board's General Meeting on September 1, 2004 at which a quorum was present. The OBPB recommended denial of the project by a vote of 9-0-0 based upon the project's FAR, the non-permitted building that took place, and parking concerns. As part of the motion, the OBPB requested that 2 units on each property (4 total) be set aside as affordable housing in lieu of any fines that may be incurred by the owner for the non-permitted building.

Staff Analysis:

As part of the project, the applicant proposes that three (3) of the 22 apartment units be set aside as affordable housing units in exchange for approval of the subject variance requests. However, the Land Development Code has no provisions for approving variances for projects providing affordable housing. Staff has reviewed the project's requests for variances and does not find evidence in support of the required variance findings (Attachment 8). Site and project conditions do not appear to have changed since the Zoning Administrator denied the previous variance requests in 1993 for a very similar proposal and there is no evidence that the site is uniquely constrained. As evidenced in the Notice(s) of Violation served the owner, the need to obtain the requested variances is a direct result of the owner's actions to construct the existing structure in violation of zoning regulations (Attachment 6). The proposed project would result in a building 150-feet wide, creating a two-story walled effect with no articulation or street yard along the entire Abbott Street frontage. Approval of the project would adversely affect the Ocean Beach Precise Plan and LCP which states, "That yards and coverage be adequate to insure provision of light and air to surrounding properties, and that those requirements be more stringent where necessary for buildings over two stories in height and for lots greater than 40' in width." Additionally, the LCP identifies lack of parking as a community issue wide issue, and requires that new development be designed to be compatible with existing structures to preserve the existing character and scale of development. As it would not provide the number of parking spaces required for the building addition, the proposed project would contribute to an existing

lack of parking condition in the Ocean Beach community, especially due to it's location in the Parking Impact overlay zone and within close proximity of the coastline and recreation areas.

ALTERNATIVE

1. Approve Coastal Development Permit No. 55655 and Variance No. 78578, with modifications.
2. Approve Coastal Development Permit No. 55655 and Variance No. 78578.

Respectfully submitted,

Patricia J. Fitzgerald, Development Project Manager

Attachments:

1. Aerial Photograph
2. Community Plan Land Use Map
3. Project Location Map
4. Project Data Sheet
5. Project Plans
6. NCCD Notice of Violation
7. Zoning Administrator Report & Findings/ Case C-21108
8. Draft Resolution with Findings
9. Community Planning Group Recommendation
10. Ownership Disclosure

WO 42-2164